

Nadler Demands Answers on Extraordinary Rendition

Tuesday, 02 January 2007

WASHINGTON, D.C. – Today, U.S. Representative Jerrold Nadler (D-NY), presumptive Chairman of the House Judiciary Committee's Subcommittee on the Constitution, sent the following letter to U.S. Attorney General Alberto Gonzales:

January 3, 2006

Hon. Alberto R. Gonzales

Attorney General

U.S. Department of Justice

950 Pennsylvania Avenue, NW

Washington, DC 20530-0001

Dear Mr. Attorney General:

I am writing to follow up on the House Judiciary Committee's Oversight Hearing of the Department of Justice, held on April 6, 2006[1]. During that hearing, you responded on several occasions that you wanted the opportunity to get back to me.[2] To date, you have not yet provided a response to any of my questions. I would appreciate receiving your response no later than January 22, 2007.

Regarding the subject of extraordinary rendition and the case of a Canadian citizen, Maher Arar, we had the following exchange:

Mr. NADLER. Thank you. Secondly, I have a question about the practice of extraordinary rendition, particularly rendition to repressive countries we know practice torture. There's one widely publicized case that illustrates the issue. A Canadian citizen, Mr. Arar, was detained in 2002 at JFK Airport in New York as a suspected terrorist. He was on his way home to Canada, changing planes at Kennedy. He was grabbed by CIA agents, I gather, secretly deported to Syria where he endured 10 months of torture in a Syrian prison.

After the Syrians determined that he didn't know anything about terror, they released him. Upon his release, he declared at a news conference that he had pleaded with U.S. authorities to let him continue on to Canada, where he has lived for over 15 years, and his family, but instead, he was flown under U.S. guard to Jordan, and handed over to Syria, where he had been born, and where he was then tortured.

Does the United States Government claim the authority to kidnap anybody at a U.S. airport, and without any administrative or judicial process of any sort, put that person on a plane to a torture-practicing nation? We do not claim that authority. Or do we?

Attorney General GONZALES. We have international agreements, which we are a party to, where the United States has agreed, has committed, that it will not render someone to another country, where we believe it's more likely than not—

Mr. NADLER. Well, do we claim the authority to render someone to another country—let's assume we believe they're not going to use torture—by what right do we—legal right, do we pick someone up at an airport and deny him the right to continue to Canada which is where he's a citizen of, and send them to Syria without any kind of administrative or judicial process?

Attorney General GONZALES. Well, I'm not commenting as to what actually may have happened or may not have—

Mr. NADLER. Do we claim the right to do that? Whatever happened in that case, is that something we claim the right to do?

Attorney General GONZALES. I don't know, but I would be happy to get back to you on that.

Mr. NADLER. You don't know if we claim the right to do that because the Government defended that in court, your Department defended that in court.

Attorney General GONZALES. Before I comment any further on that, Congressman, I'd like the opportunity to get back to you.

Mr. NADLER. Okay. And let me further ask, since we have done this, and since your Department has defended this in court, specifically in the Eastern District, is this practice limited only to airports, or do we claim the right to take people going about their business, walking on the street, grocery shopping, window shopping, at the mall, suddenly and unexpectedly to grab them and to deport them to places like Syria without any evidence, without any due process? Do we claim that right? And if we don't claim that right, why do we claim it at airports?

Attorney General GONZALES. Mr. Congressman, I'm not going to get into specific, what we do, what we don't do. What I can say is that we understand what our legal obligations are, we follow the law.

Mr. NADLER. Let me ask you the last question then. Can you assure this Committee that the United States Government will not grab anybody at an airport or anyplace in U.S. territory, and send them to another country without some sort of due process?

Attorney General GONZALES. Well, what I can tell you is that we're going to follow the law in terms of what—

Mr. NADLER. Well, does the law permit us to send someone to another country without any due process, without a hearing before an administrative, an immigration judge or somebody? Just grab them off the street and put them on a plane, goodbye without—we've done that. Does the law permit us to do that? Do we claim that right?

Attorney General GONZALES. I'm not going to confirm that we've done that——

Mr. NADLER. Well, wait a minute. That was confirmed in court. There's no question it was done.

Chairman SENSENBRENNER. The gentleman's time——

Mr. NADLER. Do we claim the right to do it?

Chairman SENSENBRENNER. The gentleman's time has expired.

Mr. NADLER. Could he answer the question, please?

Chairman SENSENBRENNER. The gentleman's time has expired. I yield myself the last 5 minutes.[3]

Regrettably, Chairman Sensenbrenner did not afford you the opportunity to provide a clear answer to these questions, free from ambiguity or evasion. You did, as the transcript reflects, offer to get back to me. Please do so. In particular, please respond to the following questions:

1. Without confirming or denying any particular action with respect to any particular individual or any case, is it the position of the United States that we may lawfully take an individual into custody in the United States, remove that person to another country or turn that individual over to the custody of another government without any form of due process? Due process includes the ability to consult with an attorney, a review by an impartial finder of fact and the ability to know the basis for being taken into custody, being removed or turned over to the custody of another country.
2. If the individual is a national of a third country, is it the position of the United States that we are not legally obliged to inform that third country of our actions with respect to that national in any or all cases? If we are so obliged, what is the extent of our legal obligations?
3. To the extent that the United States takes the position that it has the legal authority to take a person into custody and remove that person in the manner described above, is this authority limited to any particular location, such as a location other than the United States, U.S. territories, possessions, or territorial waters, an airport or other point of entry? Or does it apply to any location in the United States? If so, to which locations does this authority apply?
4. To the extent that the United States claims such legal authority, does this authority apply only with respect to foreign nationals, or does it apply equally or to a lesser extent to U.S. citizens? If it applies only to foreign nationals, is the claimed authority further limited by their status, for example a permanent resident, a person out of legal status or a person at a point of entry to the United States deemed not to have entered the United States?

For each of your answers, please provide any filings made by the United States in a legal proceeding relating to the

questions posed above. Please also include the legal basis for each answer.

Thank you for agreeing to provide answers to the questions I posed during the Committee's hearing. I realize that the limited time provided during these hearings is not always conducive to a full examination of these very important issues. I look forward to receiving your responses by January 22, 2007.

If you have any questions concerning this request, please feel free to contact me or David Lachmann (202.225.6906) at the House Judiciary Subcommittee on the Constitution.

Sincerely,

Jerrold Nadler

Ranking Democratic Member

Subcommittee on the Constitution

[1]UNITED STATES DEPARTMENT OF JUSTICE, HEARING BEFORE THE HOUSE COMMITTEE ON THE JUDICIARY, 109th Cong. (2006).

[2]Id. 101, 102.

[3]Id. 102.

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